

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

IN THE MATTER OF:

MM DOCKET NO. 93-107

Westerville, Ohio

RECEIVED

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----- )  
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MM DOCKET NO. 93-107

The above-entitled matter came on for prehearing conference pursuant to notice before Judge Walter C. Miller, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Monday, August 16, 1993 at 8:30 a.m.

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25	Conference Began: 8:30 a.m. Conference Ended: 9:02 a.m.

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P R O C E E D I N G S

1 JUDGE MILLER: This is the date for the prehearing  
2 conference in the Westerville, Ohio, FM Channel 280  
3 proceeding. We're here today to exchange direct case exhibits  
4 and otherwise firm this case up for hearing. Before we get  
5 started, let's take notices of appearance. For David A.  
6 Ringer?  
7

8 MR. BELENDIUK: Good morning, Your Honor. Arthur  
9 Belendiuk of Smithwick and Belendiuk.

10 JUDGE MILLER: For ASF Broadcasting Corporation?

11 MR. KOERNER: James A. Koerner, Baraff, Koerner,  
12 Olender and Hochberg.

13 JUDGE MILLER: For Wilburn Industries, Inc.?

14 MS. CONNER: Good morning, Your Honor. I'm Marjorie  
15 Conner. I'm here for Eric Kravitz with Brown, Nietert and  
16 Kaufman.

17 JUDGE MILLER: You're new, are you?

18 MS. CONNER: Well, new to Brown, Nietert and  
19 Kaufman, yes, sir.

20 JUDGE MILLER: You weren't there when that cellular  
21 proceeding was going on.

22 MS. CONNER: No, sir, I wasn't.

23 JUDGE MILLER: Because most of the people got in  
24 here during that.

25 MS. CONNER: That's right.

1 JUDGE MILLER: All right. For Shellee F. Davis?

2 MR. ALPERT: Dan Alpert. Good morning, Your Honor.

3 JUDGE MILLER: Good morning. For Ohio Radio  
4 Associates, Inc.?

5 MR. YELVERTON: Good morning, Your Honor. Stephen  
6 Yelverton of the law firm of McNair and Sanford.

7 JUDGE MILLER: You know, that thing's fast  
8 (reference made to clock). I hope I'm not cutting off the  
9 Bureau. For the Chief Mass Media Bureau?

10 (No response.)

11 JUDGE MILLER: Let the record reflect that there was  
12 no response.

13 (Whereupon, Counsel for the Chief Mass Media Bureau  
14 entered the room.)

15 JUDGE MILLER: However, let the record also reflect  
16 that the door just opened and in came Mr. James Shook. At  
17 least on information and belief, it's James Shook.

18 MR. SHOOK: Your information and belief is correct,  
19 Your Honor.

20 JUDGE MILLER: All right. And he will be  
21 representing the Chief Mass Media Bureau. Now, the prehearing  
22 order in this case, FCC 93M-186, was released back on April  
23 26, 1993. Let's use that as our conference agenda and if  
24 there's something we don't cover that way or that you feel we  
25 should be covering, feel free to bring it up either at the end

1 of the conference or when we reach the appropriate paragraph  
2 in the prehearing order.

3 Paragraph Two of the prehearing order deals with  
4 appearances and publication. My record shows that all of you  
5 have submitted appropriate written notice of appearance and  
6 have complied with the Commission's publication requirements.  
7 Is that what your records show, Mr. Belendiuk?

8 MR. BELENDIUK: Yes, Your Honor.

9 JUDGE MILLER: Mr. Koerner?

10 MR. KOERNER: Yes, sir.

11 JUDGE MILLER: Mr. Kravitz -- I mean, Ms. Conner?

12 MS. CONNER: Yes, sir.

13 JUDGE MILLER: Mr. Alpert?

14 MR. ALPERT: Yes, sir.

15 JUDGE MILLER: Mr. Yelverton?

16 MR. YELVERTON: Yes, sir.

17 JUDGE MILLER: Paragraphs Three through Seven of the  
18 prehearing order deal with the clarification of issues.  
19 Paragraph Three covers the W.B.C. air hazard issue which is  
20 now moot as is the Phase Two procedural dates which we have  
21 previously scheduled in this proceeding. I put out an order  
22 to that effect.

23 Paragraph Four of the prehearing order deals with  
24 integration and diversification statements. Let me first say  
25 this to everyone. I'm going to need D.O.B.'s -- date of

1 births and present residences of all integrated principals,  
2 everybody that's putting a claim in. So if this isn't in your  
3 -- it isn't in your exhibits, make arrangements to get that  
4 information into the record, either when you put the witness  
5 on the stand, as a preliminary matter, or however you --  
6 whatever turns you on. Just so we get it done. Mr.  
7 Belendiuk?

8 MR. BELENDIUK: I don't know if mine is or is not in  
9 there, Your Honor, but as far as the date of birth is  
10 concerned, would you accept a supplement to the hearing  
11 exhibits?

12 JUDGE MILLER: If that's the way you want to do it,  
13 you can do it that way.

14 MR. BELENDIUK: Okay.

15 JUDGE MILLER: You know, but what I want -- I want  
16 -- as a matter of record, I want the date of births of all  
17 integrated principals in here and the present residences. Let  
18 me confirm certain information, Mr. Belendiuk. Your client  
19 claims 100 percent quantitative integration as the sole owner,  
20 correct?

21 MR. BELENDIUK: Correct, Your Honor.

22 JUDGE MILLER: Mr. Koerner, your ASF claims 100  
23 percent quantitative integration based on Ardeth S. Frizzell's  
24 holding 100 percent of the voting stock. Is that correct?

25 MR. KOERNER: That's correct, Your Honor.

1 JUDGE MILLER: Ms. Conner, Wilburn claims 100  
2 percent quantitative integration based on Charles Wilburn's  
3 claim to integration. Is that correct?

4 MS. CONNER: Yes, sir, Your Honor.

5 JUDGE MILLER: Mr. Alpert, Shellee Davis claims 100  
6 percent quantitative integration based on the fact that she's  
7 a sole owner of her application. Is that correct?

8 MR. ALPERT: That is correct.

9 JUDGE MILLER: And Mr. Yelverton, Ohio Radio  
10 Associates doesn't claim any quantitative integration  
11 whatsoever. Is that correct?

12 MR. YELVERTON: That's correct, Your Honor.

13 JUDGE MILLER: All right. Paragraphs Five and Six  
14 deal with the joint engineering exhibit. You met at the June  
15 24, 1993 preliminary engineering exchange. Mr. Shook, you  
16 received a copy of that preliminary engineering?

17 MR. SHOOK: I did, Your Honor.

18 JUDGE MILLER: Does it pose any problems?

19 MR. SHOOK: It does not, Your Honor.

20 JUDGE MILLER: So Mr. Koerner, are you carrying the  
21 laboring oar and are you ready to exchange the final joint  
22 engineering exhibit today?

23 MR. KOERNER: Your Honor, the -- what was previously  
24 exchanged was, in fact, the final engineering exhibit.

25 JUDGE MILLER: Mine doesn't say so on it.

1 MR. KOERNER: I have one in a binder for you. All  
2 the other parties received something that says final exhibit.

3 JUDGE MILLER: Oh, they did? Well, you also better  
4 keep two in a binder for the court reporter for the upcoming  
5 evidentiary admissions session.

6 MR. KOERNER: Yes, Your Honor. I have two right  
7 here.

8 JUDGE MILLER: So when we go through that, you'll be  
9 able to handle the problem, right?

10 MR. KOERNER: Yes, sir.

11 JUDGE MILLER: Okay. Mr. Shook -- what is it? What  
12 is going on down there in the pits?

13 MR. KOERNER: Just confirming that Bureau Counsel  
14 already has what is the final.

15 MR. SHOOK: Mine didn't have the fancy covering that  
16 yours has.

17 JUDGE MILLER: That's the way life is, Mr. Shook.

18 MR. SHOOK: I just wanted to make sure I received  
19 the same exhibit.

20 JUDGE MILLER: You learn -- sometimes it takes a  
21 little while to learn those things. All right, in any event,  
22 you have a complete -- that which was given to you is a final  
23 exhibit, right?

24 MR. SHOOK: It is.

25 JUDGE MILLER: So that you -- you won't need to be

1 present since what we've discussed today covers what you  
2 generally need to represent on the record. But if you want to  
3 come on the 20th, you can, and watch Mr. Koerner identify it  
4 and offer it into evidence. But otherwise --

5 MR. SHOOK: It would be the formality of our, you  
6 know, saying that we have no objection.

7 JUDGE MILLER: Okay.

8 MR. SHOOK: That's all it would be. I probably  
9 won't attend. If anyone does come, it would be Mr. Goldstein.

10 JUDGE MILLER: All right.

11 MR. SHOOK: I'll be on vacation.

12 JUDGE MILLER: I mean, I saw Mr. Dziedzic in the  
13 hall this morning. I didn't even know why he was over here  
14 and since I was the only one on the docket today, I thought  
15 maybe Mr. Dziedzic was going to be attending.

16 MR. SHOOK: No, Your Honor.

17 JUDGE MILLER: Okay. In any event, do you want to  
18 be excused now or do you want to sit through this conference?

19 MR. SHOOK: I believe I could be excused.

20 JUDGE MILLER: All right, you're excused, Mr. Shook.  
21 Paragraph Seven of the prehearing order, under that paragraph,  
22 you're prepared to bring up and discuss the clarification of  
23 any existing issues. Are there any clarification of existing  
24 issue problems you wish to bring up, Mr. Belendiuk?

25 MR. BELENDIUK: I have one question on witness

1 notification, Your Honor, but that could wait until later.

2 JUDGE MILLER: Wait until -- we're going to --  
3 witness -- I can tell you right now what's going to happen.  
4 It's a little different than it used to be. What we go  
5 through, the evidentiary admissions session and then I turn  
6 around and say, "Okay, boys. What do you want?" Now, by that  
7 -- in other words, you know what exhibits are in, you know  
8 what exhibits are out. So you ought to know who you need.

9 MR. BELENDIUK: Okay, a --

10 JUDGE MILLER: Now, if you people -- and I have a  
11 little notation on that. I assume -- that's wrong. I can't  
12 assume that. You people -- have you people got together and  
13 established the laboring oar principle where Koerner takes  
14 responsibility for Belendiuk's client, Conners will take  
15 responsibility for Koerner's client, Alpert takes  
16 responsibility for Kravitz's client, and Yelverton takes  
17 responsibility for Alpert's client, and Belendiuk takes the  
18 responsibility for Yelverton's client? Have you done that?

19 MR. BELENDIUK: Yes, Your Honor.

20 JUDGE MILLER: Is that what you've done?

21 MR. BELENDIUK: Yes. We did it in depositions and  
22 we're going to stay with that.

23 JUDGE MILLER: Everybody has -- and you know, the  
24 only person that gets a break that way is when somebody drops  
25 out, you see. Whoever had McCormick got a break, you see.

1 MR. BELENDIUK: I got a little bit of a break on  
2 that one, sir.

3 MR. YELVERTON: I had primary responsibility, so I  
4 got the biggest break.

5 JUDGE MILLER: Okay. Well, at least -- now, that --  
6 so I'm going to then ask you people -- I'm not going to cut  
7 off anyone from cross examination. In other words, when I say  
8 -- let's take Davis. Whoever's responsible -- if Yelverton's  
9 responsible for Davis, I'll say, "Okay, who's going to cross  
10 examine Davis?" and Yelverton should speak up at that time  
11 saying, "I have primary responsibility, Your Honor," and then  
12 I'll say, "Does anybody else want to be on the list?" and if  
13 you say yes at that time, I'll put you on the list for  
14 notification. I'm not cutting you off. But you know, you  
15 ought to have -- you have to have a little faith in your  
16 brethren under this system.

17 MR. BELENDIUK: Okay. Your Honor, my question went  
18 to under these new rules, some judges require formal written  
19 showings. Is that something that you would want from us?

20 JUDGE MILLER: No.

21 MR. BELENDIUK: Okay. That was my one question.

22 JUDGE MILLER: Okay. Yeah, that -- yeah, let me say  
23 that, that -- we're on the record. I don't -- I don't cut --  
24 I don't cut people off of cross examination on that basis, on  
25 the basis of that you're now -- that the Commission has said

1 the better way to try cases is to cut down on cross  
2 examination. In fact, if you just heard me speak, you  
3 probably heard that I was just doing it the opposite way,  
4 mainly because it is my firm belief that whoever wrote that  
5 hadn't been in a hearing room for 15 or 20 years, whoever  
6 wrote that procedure. So that's the name of that tune.

7 All right. Any clarification questions you wish to  
8 bring up, Mr. Koerner?

9 MR. KOERNER: No, sir.

10 JUDGE MILLER: Ms. Conners?

11 MS. CONNER: No, sir.

12 JUDGE MILLER: Mr. Alpert?

13 MR. ALPERT: No, sir.

14 JUDGE MILLER: Mr. Yelverton?

15 MR. YELVERTON: No, sir.

16 JUDGE MILLER: All right. Paragraphs Eight and Nine  
17 deal with perfecting amendments. My record shows that the ASF  
18 perfecting amendment was granted on May 14th. That's FCC 93M-  
19 256. David Ringer's was granted the same day, May 14th.  
20 That's FCC 93M-257. And Shellee Davis's was granted May 17,  
21 1993. That's FCC 93M-270.

22 Now, in addition, I've granted ASF's May 14, 1993  
23 petition for leave to amend on June 4th. That's FCC 93M-333.  
24 I granted David Ringer's July 16, 1993 petition for leave to  
25 amend on July 30, 1993. That's FCC 93M-500. And I granted

1 Shellee Davis's August 2, 1993 motion for leave to amend on  
2 August 13, 1993. That's FCC 93M-525. And so with those  
3 rulings from the amendment standpoint, is your application up  
4 to date and ready to go, Mr. Belendiuk?

5 MR. BELENDIUK: Yes, it is, Your Honor.

6 JUDGE MILLER: Mr. Koerner?

7 MR. KOERNER: Yes, it is, Your Honor.

8 JUDGE MILLER: Mr. -- Ms. Conners?

9 MS. CONNER: Yes, sir, Your Honor.

10 JUDGE MILLER: Mr. Alpert?

11 MR. ALPERT: I believe it is, Your Honor.

12 JUDGE MILLER: Mr. Yelverton?

13 MR. YELVERTON: Yes, sir.

14 JUDGE MILLER: Paragraphs 10 and 11 cover the  
15 procedures for handling interlocutory pleadings and  
16 supplements. Is there anything you want to discuss in  
17 connection with the interlocutory pleadings and supplements,  
18 Mr. Belendiuk?

19 MR. BELENDIUK: No, Your Honor.

20 JUDGE MILLER: Mr. Koerner?

21 MR. KOERNER: No, Your Honor.

22 JUDGE MILLER: Mr. Kravitz?

23 MS. CONNER: No, Your Honor.

24 JUDGE MILLER: I mean Ms. Conners.

25 MS. CONNER: No, Your Honor.

1 JUDGE MILLER: Mr. Alpert?

2 MR. ALPERT: No, Your Honor.

3 JUDGE MILLER: And Mr. Yelverton?

4 MR. YELVERTON: No, sir.

5 JUDGE MILLER: Paragraphs 12 and 14 are the  
6 discovery provisions for this hearing, Phase One discovery.  
7 Let me just kind of summarize. It looks -- sounds to me like  
8 we have a little difficulty with turning over documents, but I  
9 guess we got that all completed. And I read in my order book  
10 where in my absence, you needed a deposition ruling. But  
11 otherwise, I guess the depositions went over in a satisfactory  
12 manner. Discovery was to have been completed by August 3,  
13 1993. Have you completed your discovery, Mr. Belendiuk?

14 MR. BELENDIUK: Yes, I have, Your Honor.

15 JUDGE MILLER: Mr. Koerner?

16 MR. KOERNER: Yes, Your Honor.

17 JUDGE MILLER: Ms. Conners?

18 MS. CONNER: Yes, sir, Your Honor.

19 JUDGE MILLER: Mr. Alpert?

20 MR. ALPERT: Yes, sir, Your Honor.

21 JUDGE MILLER: Mr. Yelverton?

22 MR. YELVERTON: Yes, Your Honor.

23 JUDGE MILLER: Paragraphs 15 through 17 cover  
24 settlement. I have read your memorandum over twice and I'm  
25 aware that the Commission encourages settlements. I have

1 always tried to abide by that policy. But it appears to me  
2 that you people have given settlement the old college try, but  
3 without success, and that's the most the Commission can ask  
4 out of you. So we'll go on to hearing. Have I read the  
5 settlement memorandum correctly, Mr. Belendiuk?

6 MR. BELENDIUK: Yes, Your Honor.

7 JUDGE MILLER: Mr. Koerner?

8 MR. KOERNER: I'm afraid so, Your Honor.

9 JUDGE MILLER: Ms. Conners?

10 MS. CONNER: Yes, sir, Your Honor.

11 JUDGE MILLER: Mr. Alpert?

12 MR. ALPERT: Yes, sir, Your Honor.

13 JUDGE MILLER: Mr. Yelverton?

14 MR. YELVERTON: Yes, Your Honor.

15 JUDGE MILLER: All right. Paragraphs 18 to 20 deal  
16 with martialing and exchanging exhibits. Are you prepared to  
17 exchange all your direct case exhibits today, Mr. Belendiuk?

18 MR. BELENDIUK: Yes, I am, Your Honor.

19 JUDGE MILLER: Do they comply with Paragraphs 18 to  
20 20 in the prehearing order?

21 MR. BELENDIUK: Yes, Your Honor.

22 JUDGE MILLER: Does each exhibit contain the  
23 affidavit of the sponsoring witness?

24 MR. BELENDIUK: Yes, Your Honor.

25 JUDGE MILLER: Saving two copies to give to the

1 court reporter at the upcoming August 20, 1993 evidentiary  
2 admissions session? Proceed with your exchange.

3 MR. BELENDIUK: Yes, I've exchanged with everybody,  
4 Your Honor, but you. And I assume we're holding for the court  
5 reporter.

6 JUDGE MILLER: Yes, saving two -- I said saving two  
7 copies to give to the court reporter at the upcoming August  
8 20th evidentiary admissions session. Have you now completed  
9 your exhibit exchange?

10 MR. BELENDIUK: Yes, Your Honor.

11 JUDGE MILLER: Okay. Are you prepared to exchange  
12 all your direct case exhibits today, Mr. Koerner?

13 MR. KOERNER: Yes, Your Honor.

14 JUDGE MILLER: Do they comply with Paragraphs 18 to  
15 20 of the prehearing order?

16 MR. KOERNER: Yes, Your Honor.

17 JUDGE MILLER: Does each exhibit contain the  
18 affidavit of the sponsoring witness?

19 MR. KOERNER: It does.

20 JUDGE MILLER: Saving two copies to give to the  
21 court reporter at the upcoming August 20th evidentiary  
22 admissions session?

23 MR. KOERNER: Yes, Your Honor.

24 JUDGE MILLER: Proceed with your exchange, Mr.  
25 Koerner.

1           MR. KOERNER: The other parties have already  
2 received theirs, Your Honor.

3           JUDGE MILLER: All right. Then you have completed  
4 your exchange.

5           MR. KOERNER: Yes, sir.

6           JUDGE MILLER: Are you prepared to exchange all your  
7 direct case exhibits today, Ms. Conners?

8           MS. CONNER: Yes, Your Honor.

9           JUDGE MILLER: Do they comply with Paragraphs 18 to  
10 20 of the prehearing order?

11          MS. CONNER: Yes, Your Honor.

12          JUDGE MILLER: Does each exhibit contain the  
13 affidavit of the sponsoring witness?

14          MS. CONNER: Yes, Your Honor.

15          JUDGE MILLER: Saving two copies to give to the  
16 court reporter at the upcoming August 20th evidentiary  
17 admissions session, proceed with your exchange.

18          MS. CONNER: Yes, sir, Your Honor. All the parties  
19 have received their copies and I have one for you, Your Honor.

20          JUDGE MILLER: All right. It's a rascal. So have  
21 you completed your exchange then, Ms. Conners?

22          MS. CONNER: Yes, sir, Your Honor.

23          JUDGE MILLER: All right. Are you prepared to  
24 exchange all your direct case exhibits today, Mr. Alpert?

25          MR. ALPERT: Yes, sir, I am.

1 JUDGE MILLER: Do they comply with Paragraphs 18 to  
2 20 of the prehearing order?

3 MR. ALPERT: Yes, sir.

4 JUDGE MILLER: Does each exhibit contain the  
5 affidavit of the sponsoring witness?

6 MR. ALPERT: They do indeed.

7 JUDGE MILLER: Saving two copies to give to the  
8 court reporter at the upcoming August 20th evidentiary  
9 admissions session, proceed with your exchange, Mr. Alpert.

10 MR. ALPERT: All the other parties have received  
11 copies already and I am now presenting Your Honor with his own  
12 personal copy.

13 JUDGE MILLER: All right. Have you completed your  
14 exchange, Mr. Alpert?

15 MR. ALPERT: I now have.

16 JUDGE MILLER: All right. Are you prepared to  
17 exchange all our direct case exhibits today, Mr. Yelverton?

18 MR. YELVERTON: Yes, Your Honor.

19 JUDGE MILLER: Do they comply with Paragraphs 18 to  
20 20 of the prehearing order?

21 MR. YELVERTON: Yes, Your Honor.

22 JUDGE MILLER: Does each exhibit contain the  
23 affidavit of the sponsoring witness?

24 MR. YELVERTON: Yes, Your Honor.

25 JUDGE MILLER: Saving two copies to give to the

1 | court reporter at the upcoming August 20th evidentiary  
2 | admissions session, proceed with your exchange, Mr. Yelverton.

3 |           MR. YELVERTON: Your Honor, I've already exchanged  
4 | copies with the other parties and I left a copy on your desk  
5 | this morning with a white binder.

6 |           JUDGE MILLER: So you have completed your exchange.

7 |           MR. YELVERTON: Yes, Your Honor.

8 |           JUDGE MILLER: All right. Paragraph 21 of the  
9 | prehearing order sets up the upcoming August 20th evidentiary  
10 | admission session and each of you in docket order will  
11 | formally offer -- formally offer -- identify and offer into  
12 | evidence the exhibits you exchanged today and I'll rule on any  
13 | objections to all or portions of those exhibits. When that is  
14 | completed, immediately we'll set up cross examination  
15 | notification and each of you will indicate what witnesses, if  
16 | any, you need to cross examine. Are those procedures clear?

17 |           Now, Mr. Belendiuk, let me state something that --  
18 | just so that our previous conversation on witness notification  
19 | wasn't incomplete. Let's assume a situation where you had a  
20 | limited partnership, general partner and three limited  
21 | partners. Let's assume that when it came time for  
22 | notification, Mr. Koerner indicated that he wanted to cross  
23 | examine one of more of those limited partners and the sponsor  
24 | of the -- the sponsor of the limited partnership's direct case  
25 | objected and let's say that on the grounds A, that don't go to

1 the partners that exchanged any exhibits and that Mr. Koerner  
2 had an opportunity to depose these people, that he had, in  
3 fact, taken advantage of that deposition, and that therefore,  
4 there's no need -- there's no need for these people. They're  
5 not integrated. There's no need for them to be cross  
6 examined.

7 I would then hear from Mr. Koerner before I --  
8 before I would honor the notification request. It may well be  
9 that when Mr. Koerner would open his mouth and say, "The  
10 limited partner I want to testify to holds 70 percent of the  
11 equity," and I'd say, "Say no more, Mr. Koerner. You'll cross  
12 examine," because it's my belief that when limited -- when  
13 limited partners hold over 50 percent of the equity, you might  
14 as well get a record made to find out if that person is as  
15 passive as the person indicates.

16 All I'm saying is that -- I'm not cutting off cross  
17 examination from anybody. As a general rule, you notify for  
18 cross and I say fine. I sometimes get a little upset when --  
19 let's say that Mr. Alpert suddenly finds himself -- his  
20 witness facing four cross examiners, all four. Everybody  
21 wants to cross examine Shellee Davis, you see. That upsets me  
22 a little bit because I don't like to see witnesses have to go  
23 through trial by ordeal. But I've gone ahead and even allowed  
24 that on occasions. Mr. Alpert?

25 MR. ALPERT: My question's going to be a

1 clarification with respect to your procedures, with respect to  
2 let's say limited partnerships are not voting stockholder  
3 situations. In the event, let's say, we're not basing it  
4 purely upon ownership equity interest, like you said 70  
5 percent is -- or over 50 percent is a general guideline, for  
6 example, but rather let's say the request for cross  
7 examination of a passive -- allegedly passive individual is  
8 based upon deposition testimony, do we need to be prepared to  
9 have copies of those transcript excerpts for your review?

10 JUDGE MILLER: I would.

11 MR. ALPERT: Okay.

12 JUDGE MILLER: I would. If I wanted to convince a  
13 judge that I needed to cross examine somebody, then I think  
14 I'd have material there, although that's no guarantee because  
15 one time Harry Cole came to me and made a variance objection.  
16 He had all the material and I granted it. Ruth Bader Ginsberg  
17 didn't see that there was a variance. But that's besides --  
18 so you've got no guarantees is all I'm telling you. All  
19 right. Are the procedures that we're going to follow on the  
20 evidentiary admissions session clear, Mr. Belendiuk?

21 MR. BELENDIUK: Yes, Your Honor.

22 JUDGE MILLER: Mr. Koerner?

23 MR. KOERNER: Yes, sir.

24 JUDGE MILLER: Ms. Conners?

25 MS. CONNER: Yes, sir, Your Honor.

1 JUDGE MILLER: Mr. Alpert?

2 MR. ALPERT: Yes, sir.

3 JUDGE MILLER: Mr. Yelverton?

4 MR. YELVERTON: Yes, Your Honor.

5 JUDGE MILLER: Paragraphs 22 to 23 deal with  
6 extensions of time and the eight hearing days that we've set  
7 up between August 31st and September 10, 1993. You may not  
8 need all those days, but we've got them reserved in case we  
9 need them. We're not going to be meeting on Labor Day,  
10 September 6, 1993, but on the eight days that we do meet,  
11 we'll begin at 8:30 a.m. and end up at 5:30 p.m. with an hour  
12 for lunch.

13 And in that connection, I've discovered that trials  
14 take less time when they're conducted at a full day basis with  
15 no interruptions other than short scheduled breaks in the mid-  
16 morning and mid-afternoon and time for lunch. With that said,  
17 let me go over some basic ground rules for hearings that I  
18 think will -- if we abide by them will speed up the hearing.

19 Rule One, address the bench and not each other.  
20 Personal colloquies between counsel cause delays, promote  
21 confusion, and create a generally inefficient atmosphere.  
22 Now, having said that, do you want to bet it's going to be  
23 violated? Having told you in advance now, do you want to bet  
24 me that it's going to be violated?

25 Rule Two, treat your adverse witnesses with fairness

1 and respect. Be polite. Don't confuse robust litigation and  
2 rudeness. There's simply no need to be abusive and offensive  
3 in the hearing room. Every once in awhile, I run into a cross  
4 examiner that simply adduces facts. It's always a pleasant,  
5 pleasant break.

6 Rule Three, don't argue with the witnesses. Counsel  
7 can't testify, the witness can, so you're going to lose the  
8 argument. And a corollary to that is don't write findings and  
9 conclusions based on what you say. Base it on what the  
10 witness says.

11 Rule Four, if you intend to make an evidentiary  
12 variance objection, have the portion of the application and  
13 the rule that you claim it's being varied from. I want to be  
14 physically be able to see the variance myself.

15 Rule Five, we're going to proceed in docket order,  
16 so have your witnesses ready to go. We're not going to hold  
17 up the hearing because a witness or witnesses haven't arrived  
18 yet. Don't anticipate because there are several witnesses  
19 ahead of the ones that you have scheduled, that you have ample  
20 time to get them here. That type of time cushion has a way of  
21 evaporating in a hurry.

22 I had an instance where there was a partial  
23 settlement offered to me right at the beginning of a hearing.  
24 Mr. Koerner, if you would harken back to Newark, and that just  
25 cut five parties right out of the procedure that particular